

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
THE CITY OF TACOMA TO THE PORT  
OF TACOMA

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

v.

CITY OF TACOMA and PORT OF TACOMA,

Respondents.

SHB No. 75

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being a request for review of the issuance of a  
shoreline management substantial development permit for the Port of  
Tacoma marina at the Hylebos Waterway site having come on regularly for  
hearing before the Shorelines Hearings Board on February 8 and 9,  
May 8, 9 and 19 and May 20 and 21, 1974 at Tacoma, Washington and  
appellants Washington State Department of Ecology and Attorney General

1 appearing through their attorney, Robert V. Jensen, Assistant Attorney  
2 General, and respondent City of Tacoma appearing through its attorney,  
3 William J. Barker, Assistant City Attorney and respondent Port of  
4 Tacoma appearing through its attorney, James J. Mason; and Board members  
5 present at the hearing being W. A. Gissberg (presiding) and Mary Ellen  
6 McCaffree, Arden A. Olson, Robert E. Beaty, Robert F. Hintz and Walt  
7 Woodward; and the Board having considered the sworn testimony, exhibits,  
8 records and files herein and arguments of counsel and having entered  
9 on the 25th day of September, 1974, its proposed Findings of Fact,  
10 Conclusions of Law and Order; and the Board having served said proposed  
11 Findings, Conclusions and Order upon all parties herein by certified  
12 mail, return receipt requested and twenty days having elapsed from said  
service; and

14 The Board having received no exceptions to said proposed Findings,  
15 Conclusions and Order; and the Board being fully advised in the premises;  
16 now therefore,

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
18 Findings of Fact, Conclusions of Law and Order, dated the 25th day of  
19 September, 1974, and incorporated by this reference herein and attached  
20 hereto as Exhibit A, are adopted and hereby entered as the Board's  
21 Final Findings of Fact, Conclusions of Law and Order herein.

22  
23  
24  
25  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 23rd day of October, 1974.

2 SHORELINES HEARINGS BOARD

3 Walt Woodward  
4 WALT WOODWARD, Chairman

5 Robert E. Beaty  
6 ROBERT E. BEATY, Member

7 W. A. Gissberg  
8 W. A. GISSBERG, Member

9 Robert F. Hintz  
10 ROBERT F. HINTZ, Member

11  
12 ARDEN A. OLSON, Member

13 CERTIFICATION OF MAILING

14 I, Dolories Osland, certify that I deposited in the United States  
15 mail, copies of the foregoing document on the 24th day of  
16 October, 1974, to each of the following-named parties, at the last  
17 known post office address, with the proper postage affixed to the  
18 respective envelopes:

19 Mr. Robert V. Jensen  
20 Assistant Attorney General  
21 Department of Ecology  
22 St. Martin's College  
23 Olympia, Washington 98504

24 Mr. William J. Barker  
25 Attorney at Law  
345 County-City Building  
Tacoma, Washington 98402

Mr. James Mason  
Attorney at Law  
1008 South Yakima Avenue  
Tacoma, Washington 98405

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Mr. Marshall W. Perrow, Architect  
2 600 Commerce  
Tacoma, Washington 98402

3 Port of Tacoma  
4 P. O. Box 1837  
Tacoma, Washington 98401

5 Mr. Russell C. Buehler, Director  
6 Tacoma Planning Department  
335 County-City Building  
Tacoma, Washington 98402

7 Mr. Bob Stevens  
8 Department of Ecology  
St. Martin's College  
9 Olympia, Washington 98405

10 Ms. Jeanne Bouton, et al.  
11 3826 Marine View Drive N.E.  
Tacoma, Washington 98422

12 Mr. J. J. Van Buskirk  
Van Buskirk and Haas  
13 5407 South Tacoma Way  
Tacoma, Washington 98409

14 Dolories Osland  
15 DOLORIES OSLAND, Clerk of the  
16 SHORELINES HEARINGS BOARD  
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PS.  
Mason

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SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL  
DEVELOPMENT PERMIT ISSUED BY  
THE CITY OF TACOMA TO THE PORT  
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STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY, and  
SLADE GORTON, ATTORNEY GENERAL,

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v.

CITY OF TACOMA, PORT OF TACOMA,

Respondents.

SHB No. 75

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The above numbered request for review of the issuance of a shoreline management substantial development permit was consolidated for hearing purposes only with SHB Nos. 72, 71 and 76, and a hearing thereon was held at Tacoma, Washington on February 8 and 9, May 8, 9 and 19, and May 20 and 21, 1974, before Board members W. A. Gissberg (presiding) and Mary Ellen McCaffree, Arden A. Olson, Robert E. Beaty, Robert F. Hintz and

EXHIBIT A

1 | Walt Woodward.

2 | Appellants Washington State Department of Ecology and Attorney  
3 | General appeared through Robert V. Jensen, Assistant Attorney General;  
4 | respondent City of Tacoma appeared through William J. Barker, Assistant  
5 | City Attorney; respondent Port of Tacoma appeared through its attorney,  
6 | James J. Mason.

7 | Having heard the testimony and considered the exhibits and post-  
8 | hearing arguments, and being fully advised, the Board makes and enters  
9 | these

10 | FINDINGS OF FACT

11 | I.

12 | The Port of Tacoma is a municipal corporation of the State of  
; | Washington. Its jurisdictional boundaries are coterminous with those  
14 | of Pierce County.

15 | II.

16 | The Port of Tacoma operates a marina for small pleasure and  
17 | commercial vessels at Slip 3, Blair Waterway. It accommodates  
18 | approximately 200 boats. This marina is unsuitably located because it  
19 | is situated adjacent to terminals used by ocean-going vessels, creating  
20 | hazards from collision, vessel wash, etc. The Port intends to close the  
21 | existing marina when another location has been found for the boats.  
22 | Commencing in 1967, the Port has conducted studies and investigations  
23 | into the question of whether it should construct and operate a new marina  
24 | in Pierce County. Such investigations disclosed that there is a need  
25 | for approximately 1,000 wet moorages for small boats in the Tacoma area  
which cannot be met by existing marina facilities. The Port since the

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CONCLUSIONS OF LAW AND ORDER

mid 1950s has repeatedly studied possible marina locations at Wollochet Bay, Gig Harbor, Day Island, the west shore of Commencement Bay, the City Waterway, and the Hylebos Waterway. Such investigations disclosed that the Hylebos Waterway was the most suitable location by reason of wind and current conditions, vessel traffic, access to the site, utilities, and other considerations essential to location of a marina.

### III.

The Hylebos Waterway site selected by the Port consists of 25 acres, of which 20 acres are in the intertidal zone, situated on the east shore of Commencement Bay at the entrance to the Hylebos Waterway. At all times herein relevant the Port has been the contract purchaser of said premises.

The site is in an area which has for a long time been zoned for and committed to heavy industrial purposes. It is at the mouth of a waterway along whose banks are situated such industries as shipyards, chemical plants, a ship dismantling facility, a scrap metal yard and pier, etc. Under the terms of the relevant zoning and of the Recommended Master Program for Shoreline Development of the City of Tacoma, a marina is a permitted use of the site.

The site includes a sand bar or sand spit consisting of dredge fill which was dumped there about forty years ago. The sand bar or sand spit is of some value as a resting place for birds, and contributes to the habitat of fish in Hylebos Waterway. Construction of the marina will entail dredging the sand spit or sand bar, and filling an area of 11 acres shoreward of it to accommodate shore structures, parking and breakwaters.

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IV.

The proposed marina at the Hylebos Waterway site will have no significant adverse environmental effect on marine life. The testimony of Anna Marie Johnstone, an expert marine biologist and a member of the Pierce County Master Program Citizen Advisory Committee established that invertebrate species are more prolific near marinas resulting in fish fry in abundance feeding on the organic material under marina floats and docks; a firm substrate, i.e., rocks, pilings and sunken material is more conducive to the development and growth of invertebrates than the two and one-half feet of mud now found at the site; that eel grass can naturally and quickly regenerate into a newly dredged area and can also be successfully transplanted to hasten the process.

V.

The City Waterway has been extensively investigated as a potential site for the Port marina. It is possible that a marina may be located in the City Waterway at some time, but at present and in the near future it is not a practical marina site. The City Waterway from its entrance to the bridge at South 15th Street is heavily built up with industrial and commercial buildings. The west side of the Waterway, where the marina would have to be placed, is devoted to such uses along virtually its entire length. Dock Street, a heavily travelled city street, serves such industries on their sides away from the water, and on the other side of Dock Street is the Burlington Northern main line right of way, with associated yards, structures, etc. There is no feasible way of providing parking for a marina, and sanitary sewer service is not now available in the area. City Waterway is regularly

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER



1 traversed by log rafts, tug and barge traffic, and vessels from  
2 Martinac Shipbuilding Co., a shipyard adjacent to the South 15th Street  
3 bridge. The presence of a small boat marina in the Waterway would  
4 create a hazard of collision and wave damage caused by the presence of  
5 such traffic.

6 The portion of City Waterway south of the South 15th Street bridge  
7 includes possible sites for a future marina. The bridge, which is a  
8 combination road and railroad bridge owned by the Burlington Northern  
9 Railroad, is a swing drawbridge which is normally maintained in a closed  
10 position. At high water there is a clearance of three to four feet  
11 beneath the closed bridge. Such clearance is grossly insufficient for  
12 the safe passage of small boats. It is not practical to normally  
13 maintain the bridge in an open position or to open and close it for the  
14 large numbers of small boats which would be generated by a marina.  
15 There are no immediate plans for removal or replacement of the bridge.  
16 As long as the present bridge remains the portion of City Waterway south  
17 of South 15th Street is not a practical location for a marina. The  
18 portion north of South 15th Street is not a practical location for a  
19 marina for the reasons hitherto stated.

20 If a marina were to be built in the City Waterway in the future,  
21 it would accommodate approximately 200 boats. The demand for small  
22 boat moorages in the Tacoma area is sufficient to support both the  
23 Port marina at the Hylebos site and such a marina in City Waterway.

## 24 VI.

25 The Port marina project is a major action which significantly  
affects the environment. The Port of Tacoma submitted a draft

27 FINDINGS OF FACT,  
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1 environmental impact statement, received comments thereon, and responded  
2 to such comments in a final environmental impact statement, all in proper  
3 form and in conformity with the Environmental Policy Act of 1971,  
4 chapter 43.21C RCW.

5 VII.

6 The Port marina is a substantial development on shorelines of this  
7 state. On December 18, 1973 the City Council of the City of Tacoma  
8 approved a substantial development permit for the marina pursuant to  
9 the Shoreline Management Act of 1971, chapter 90.58 RCW. Following  
10 hearings by this Board on February 8 and 9, 1974, the matter was  
11 remanded to the City Council for resolution of an apparent ambiguity  
12 in the permit, arising from the presence in the environmental impact  
13 statement and other supportive documents of differing drawings of the  
14 proposed marina. In April, 1974 the City Council reissued the permit  
15 and annexed thereto a set of drawings which resolved such ambiguity.  
16 The permit as reissued is unambiguous and complies with the Shoreline  
17 Management Act of 1971 in all respects.

18 VIII.

19 The Port of Tacoma marina is designed in a manner which will  
20 protect fish and shellfish resources and will be aesthetically  
21 compatible with surrounding areas. Among its design features are  
22 openings in the breakwater to allow free migration of fish, and a  
23 restriction upon covered boat stalls so as to present an attractive  
24 and interesting view of the moorages. The openings in the solid  
25 breakwater will eliminate any potentially detrimental effects on the  
movement of sand and the circulation of water.

27 FINDINGS OF FACT,  
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IX.

The Port of Tacoma marina will be a recreational location serving a substantial portion of the general public. There is at present no access to the water on the east shore of Commencement Bay except by going upon private property. The marina will furnish such access to the general public. It is a type of public recreational facility for which there is a substantial and growing need in the Tacoma area.

X.

No evidence was adduced to show that a floating breakwater which would withstand the substantial wave action at the site could at a reasonable cost be incorporated in the Port of Tacoma marina instead of a fill bulkhead.

XI.

All or part of the Hylebos marina site is within the boundaries of the Puyallup Indian Reservation.

XII.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From the foregoing Findings of Fact the Board draws the following

CONCLUSIONS OF LAW

I.

The Board has jurisdiction of the parties and of the subject matter.

II.

The substantial development permit granted for the Port of Tacoma marina at the Hylebos Waterway site is consistent with the terms, purpose and interest of the Shoreline Management Act of 1971,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 RCW 90.58.020, the Guidelines of the Department of Ecology, WAC 173-16-010  
2 to 173-16-200, and the Recommended Master Program for Shoreline  
3 Development of the City of Tacoma.

4 III.

5 The environmental impact statement and other documents filed in  
6 support of the Port of Tacoma's application for a substantial development  
7 permit for the marina, together with the actions taken by the City of  
8 Tacoma with reference to such application, comply with the Environmental  
9 Policy Act of 1971, chapter 43.21C RCW.

10 IV.

11 There was a reasonable investigation and discussion of the  
12 environmental effects of this and alternative marina sites, and sufficient  
13 information was presented to permit a reasoned choice of alternatives.  
14 The alternatives required to be discussed by the Environmental Policy  
15 Act are those which are reasonably available.

16 V.

17 Department of Ecology Guidelines relating to filling, breakwaters  
18 and vehicular parking are not mandatory, but are suggestive and  
19 flexible dependent upon local conditions (WAC 173-16-060). Under the  
20 conditions at the Hylebos marina site, the filling, breakwaters and  
21 parking contemplated by the substantial development permit are  
22 appropriate and reasonable and within the intent of such Guidelines.

23 VI.

24 The proposed marina at the Hylebos Waterway site, including its  
25 appurtenant structures, is a water-dependent use of such site.

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

VII.

The action of the City Council of the City of Tacoma in granting the substantial development should be sustained, and the permit should be approved as valid.

VIII.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Shorelines Hearings Board issues this

ORDER

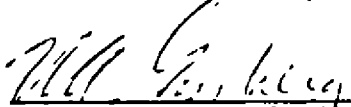
The action of the City Council of the City of Tacoma in granting the substantial development permit for the Port of Tacoma marina at the Hylebos Waterway site is sustained. The permit is approved as valid.

DATED this 25<sup>th</sup> day of September, 1974.

SHORELINES HEARINGS BOARD

\_\_\_\_\_  
WALT WOODWARD, Chairman

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ROBERT E. BEATY, Member

  
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W. A. GISSBERG, Member

  
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ROBERT F. HINTZ, Member

  
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ARDEN A. OLSON, Member

FINDINGS OF FACT,  
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1 WE DISSENT:

2       The majority in this instance has adopted the defensible position  
3 that lands and shorelines already devoted to industrial siting are the  
4 best suited for further industrial expansion. In so doing they have  
5 unfortunately abdicated responsibility for the maintenance of the  
6 environment in this intensively used area. The Hylebos Waterway is  
7 currently one of the worst examples of ill-planned industrial siting in  
8 the Puget Sound Basin. This heavily developed harbor area to the north  
9 of Tacoma is devoted to industrial uses because of the simple fact that  
10 it was cheap to fill and build manufacturing and other industrial plants  
11 with no regard for the precious environmental resource that was depleted  
12 thereby.

3       However, Nature has managed to survive at the outer limits of this  
14 industrial area and the Hylebos Waterway has become one of the more  
15 important areas for the feeding and resting of migrating water fowl  
16 in this area of Puget Sound. In addition, birds and fish inhabit the  
17 area with salmon fry of at least two different varieties and herring  
18 being the most common game fish present.

19       The state has argued that the survival of the fish life and the  
20 wild fowl on this site as well as the natural littoral drift of the  
21 shoreline would be enhanced by the use of floating docks, and break-  
22 waters. Floating docks and breakwaters as opposed to piling docks and  
23 rock filled breakwaters allow the natural water currents to maintain the  
24 shoreline and provide shallow water to protect fish fry. Otherwise,  
25 small salmon are driven out into deeper waters and are there subject to  
predation.

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1       The majority, in its letter to the parties, said that there was no  
2 evidence to prove the assertion that floating docks would be either,  
3 economic or structurally possible in this marina complex. However, the  
4 uncontroverted evidence of one of the respondents' own witnesses,  
5 Marshall Perrow, is to the contrary. This prominent marine architect,  
6 who has built boat facilities from Aden to Dutch Harbor and is  
7 unquestionably expert in this whole area, testified directly to the  
8 contrary. His expert testimony is clearly that the capability for  
9 such design exists and is less costly than the earth moving techniques  
10 proposed by the Port of Tacoma. The site is well suited for such design  
11 with the prevailing three foot wave crest on this shore. The contemplated  
12 design would allow the continued free flow of the water, would allow  
13 the use of these waters by the native fish and would be far superior to  
14 the scheme contemplated by the Port of Tacoma. Indeed, the Port seems  
15 to be imposing a costly scheme of overbuilding this marina on the public  
16 where the private sector (see decision, SHB No. 76) has made the effort  
17 to determine the most efficient and economic means of serving those boat  
18 owners in its marina. This, coupled with environmental considerations,  
19 argues clearly against the Port proposal. The Port's witness was  
20 clearly ignorant of the latest technological resources available in this  
21 area as they were elucidated by Mr. Meaker's architect. It is possible  
22 that the proposed design modifications would enable the bird life in  
23 this area to survive to some extent as well.

24       The respondents themselves introduced evidence that the eel grass  
25 which is such an important part of the food chain in this estuary could  
be easily restored and might indeed regenerate itself. However, the

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1 Board has not seen fit to require eel grass restoration. In addition,  
2 the existing sandspit which plays an important role in the life  
3 surrounding this area was artificially created and could be easily  
4 restored with the 30,000 cubic yards of dirt that will be removed from  
5 the proposed basin; it is then possible that some of the bird life here  
6 would continue to have the means to sustain itself. The evidence was  
7 clearly adduced that once the habitat was gone the birds would have  
8 nowhere to go and would disappear if their feed source disappeared. The  
9 Christmas bird count of the Audubon Society at this site indicates that  
10 there are many species of birds nesting or feeding in this area  
11 including the Western Grebe, which is nationally an endangered species,  
12 as well as Gadwalls and Hooded Mergansers which are otherwise not seen  
} in the Tacoma area.

14 Indeed, a quick look at the evidence reveals a wide variety of bird  
15 life that would not be otherwise seen in proximity to a major urban  
16 area such as Tacoma. The available feeding sites for these animals in  
17 Puget Sound are disappearing; one of the major sites was destroyed for  
18 all but those species that are most adaptable to man with the construction  
19 of the Day Island Marina. The testimony was adduced that the birds  
20 won't go elsewhere and the marina will destroy them. To make no effort  
21 to save them is both contrary to the Shoreline Management Act and the  
22 master plan of the City of Tacoma which provides that we should encourage  
23 the preservation of fish and wildlife for future generations.

24 The respondents argued that a new order of life will emerge around  
25 the piers and bulkheads of the marina. These species will develop  
around the food chain that begins with the barnacles and other animals

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CONCLUSIONS OF LAW AND ORDER



1 that grow naturally on bulkheads and rock riprap. While this will  
2 mean a varied and rich ecological system around the marina, it is  
3 unfortunately the case that these species are not endangered. As more  
4 industrial and other development occurs on the shorelines we are seeing  
5 more havens for these kinds of fish throughout the Puget Sound. The  
6 environment for salmon fry and herring and the birds in question is  
7 disappearing and this should be the paramount interest in dealing with  
8 wild life which has somehow survived adjacent to this sprawling  
9 industrial complex in the Hylebos area. We must attempt to preserve  
10 those species which require the natural shoreline. Any other  
11 interpretation would be contrary to the intent of the Act. To do this  
12 we must design the site in such a way that it will make the greatest  
13 possible effort to help preserve the existing eco-system here. We must  
14 find a way to design with nature rather than bulldozing it aside and  
15 stacking up rocks and saying that the new life forms which grow up  
16 around them are suitable substitute for the endangered species of the  
17 Puget Sound area. We have an opportunity here to undertake a positive  
18 and innovative attempt to minimize the environmental damage of this  
19 project. Both the technology and the funds are available. The imposition  
20 of such standards should be preferable for the Port because it would  
21 save money. Indeed, the private developer in a related case has found  
22 it monetarily possible to do so. We believe that the evidence is clear  
23 that this is both desirable and feasible on the site and we should  
24  
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CONCLUSIONS OF LAW AND ORDER

1 make a reasoned attempt to impose higher standards than have been  
2 adopted by the Board in this instance. For these reasons, we dissent.

3 DONE at Lacey, Washington this 25th day of September, 1974.  
4 ~~June~~ 1975.

5   
6 ROBERT E. BEATY, Member

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8 WALT WOODWARD, Chairman

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27 FINDINGS OF FACT,  
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